

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VENTANA MEDICAL SYSTEMS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-1522 (GMS)
)	
DAKOCYTOMATION CALIFORNIA)	
INC.,)	
)	
Defendant.)	

ORDER

WHEREAS, on November 17, 2005, Dakocytomation California Inc. (“Dakocytomation”) filed a Motion to Strike Portions of Plaintiff Ventana’s Answering Claim Construction Brief (D.I. 51);

WHEREAS, the motion asserts that Ventana Medical Systems, Inc.’s (“Ventana”) answering brief explains the workings of Dakocytomation’s accused infringing device to support its claim construction argument;

WHEREAS, on December 5, 2005, Ventana filed an answering brief opposing Dakocytomation’s motion;

WHEREAS, the court, by virtue of its extensive experience in patent litigation, is well aware that claims are not construed in light of, or by reference to, the accused device;¹ and

WHEREAS, the court did not consider any information offered by Ventana with respect to the accused infringing device when construing the claim terms of U.S. Patent No. 6,827,901;

¹ *SRI Int’l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1118 (Fed. Cir. 1985) (*en banc*).

IT IS HEREBY ORDERED that:

1. The defendant's Motion to Strike Portions of Plaintiff Ventana's Answering Claim Construction Brief (D.I. 51) is DENIED as moot.

Dated: January 11, 2006

/s/ Gregory M. Sleet
UNITED STATES DISTRICT JUDGE